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Testimony of
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Written Testimony
Before the
Judiciary Committee

Raised Bill #6628 'An Act Adopting the Revised Uniform Arbitration Act'

March 20, 2009

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This written testimony is being submitted by Ronald Cordilico, Legal Counsel to the Connecticut Education Association (CEA). The CEA opposes 'An Act Adopting the Revised Uniform Arbitration Act' as applied to arbitrations done pursuant to a collective bargaining agreement. The CEA represents over 37,000 teachers covered by over 150 collective bargaining agreements. This means that CEA locals file more grievance arbitrations than any other group.

Grievance arbitration in collective bargaining has had a long and successful history in Connecticut. Grievance arbitration, as a system of alternative dispute resolution to judicial determination, has received strong support from both the courts and the legislature. In the mid-1970's, the Connecticut Supreme Court, in Board of Education of the Town of Greenwich v. Frey, 174 Conn. 578 (1978), adopted the "positive assurance test" first enunciated by the United States Supreme Court in United Steel Workers of America v. Gulf and Warrior Navigation Company, 363 U.S. 574, 80 S. Ct. 1347, 1354, 4 L.Ed. 2d 1409 (1960). Under this test, unless it could be said with "positive assurance" that a grievance was not susceptible of an interpretation that would cover the asserted dispute, the matter was deemed to be arbitrable.

In 1997, the Connecticut Legislature amended Connecticut General Statutes Section 52-418 to provide that where an arbitration award is made pursuant to a collective bargaining agreement and the award is defective, a court, upon vacating an award, shall remand it to the original arbitrator or to a new arbitrator. These two examples of support by the Legislature and the courts show why arbitration in collective bargaining has been so successful and efficient in Connecticut.

Raised Bill No. 6628 confuses the role of the arbitrator and the court. For example, at the present time, under C.G.S. Section 52-418, a court must order a re-hearing upon vacating an award that is not "final and definite." Under Raised Bill No. 6628, Sec. 20 it is the arbitrator who may modify upon the motion of a party the award if it is not final and definite rather than the court. If the arbitrator refuses to modify the award, there is no remedy since the court under Sec. 23 would not have the power to vacate and remand for this reason.

In sum, the old adage that "things not necessary to change are necessary not to change" should be applied to Raised Bill No. 6628 as it applies to arbitration under collective bargaining agreements.

Thank you.